IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

LAND ACQUISITION REFERENCE NO.3 OF 1993
IN
LAQ-1/1988

The Special Land Acquisition Officer (7),
Bombay and Bombay Suburban District,
Shri. Chhatrapati Shivaji Maharaj Market,
2nd floor, Paltan road,
Bombay 400 001.

AND

M/s. Hindoostan Spinning & Weaving Mills Ltd.,16,Sir Vithaldas Chamber,
Bombay Samachar Marg,
Bombay 400 001.

....Claimant.

AND

Municipal Commissioner,
Greater Bombay Municipal Corporation,
B.M.C. Head Office, Opp. Bombay V.T.
Bombay 400 001.

....Acquiring Body.

Mrs.S.M. Dandekar for the for the SLAO.

Mr. U.J. Makhija alongwith Mr. Pimple for the Acquiring Body.

Mr. C.M. Korde, Sr. Counsel alongwith Mr. Milind Jadhav and Ms. Aaradhana Bhansali i/by Hariany & Co. for the claimant.

CORAM : R.S. MOHITE,J.
DATED : 30/8/2006.

P.C.

1. This is a reference filed by the Special Land

Acquisition Officer (7), Bombay and Bombay Suburban District under Section 18 of the Land Acquisition Act. The said reference is filed on the application made by the claimants who are dissatisfied with the amount of compensation awarded by the Special Land Acquisition Officer (7) vide his award dated 19.10.1992.

2. The brief facts of the case which led to the filing of the reference are as follows:

a) That, land bearing C.S.No.1896 admeasuring 1395.41 sq.mtrs. and land bearing C.S. No.1/1896 admeasuring 163.5 sq. mtrs. situated in the Byculla Division of the Bombay Municipal Corporation was sought to be acquired by the State for the public purpose of extension of Nair Hospital. The two lands were held by the claimants under a 99 years lease which contained a revival clause under perpetuity. The total area of the two lands aforesaid is 1558.92sq.mtrs. Both these lands are adjoining to each other and there is no dispute that in C.S. No.1/1896 there is a petrol pump which was given by the claimants to Caltax India Ltd and which company later on became Hindustan Petroleum Ltd.

b) On 22.2.1990, Government of Maharashtra issued a notification under Section 126(2) read with sub section (4) under Maharashtra Regional Town Planning Act

declaring that the aforesaid lands were needed for the public purpose of extending Nair Hospital. The said declaration was published in the Maharashtra Government Gazette on 19.7.1990. On 6.11.1990, Section-9 notices were issued to the interested parties and in pursuance thereof on 26.12.1990 by Advocate's letters dated 26.12.1990 read with 18.12.1990 claimants claimed compensation at the rate of Rs.20,000/- per sq. mrts.

c) After considering the material on record, the Special Land Acquisition Officer (7) Bombay and Bombay Suburban District passed an award under Section 11 of the Land Acquisition Act. He found that compensation as determined was payable after taking into account two instances of sale produced by the claimants in nearby locality. He concluded in the award that in his opinion valuation of the land under acquisition, on the last date of publication of the notification i.e. 13.11.1990 was Rs.11,000/- per sq.mtrs. Based on this valuation, he calculated the solatium on the value of the land. He made certain deductions such as Government interest and shifting charges payable to the tenants if they had actually shifted. As the claimants agreed to take away salvage of the existing structures in the said plots after demolition, he calculated salvage valuation as Nil. After making calculations as can be found in the award he declared the total consideration payable as

Rs.2,62,55,733.00 and further declared that same should be apportioned between five parties as mentioned in the award in specified proportion.

d) On 27.11.1992, claimants made an application to the Special Land Acquisition Officer (7) for referring the matter. The said application was favourably considered and that is how the present reference came to be filed by the Special Land Acquisition Officer in this court on 8.6.1993.

3. At the stage of evidence claimants led evidence of two witnesses. Their first witness was Mr. Narendra Naidu who was a Manager working in the claimant's company and the second witness was Dr. Roshan N. Namawati who was an Architect, Engineer, Surveyor and registered Estate Valuer practicing in Bombay. Through these witnesses several documents were produced on record and exhibited in evidence. On behalf of the Acquiring body no evidence was led after the evidence of the claimants was completed. The evidence, as recorded through a Commissioner, has been produced on record.

4. I have perused all the evidence both ocular and documentary before me. At the very out set, the Advocate for the claimants stated that he was not going to dispute the deductions made in the award concerning

the Government interest and shifting charges said to be payable to the tenants since those charges totalled to a minor amount. He stated that he was restricting his arguments to the valuation of the land acquired. He pointed out that two instances had been placed before the Special Land Acquisition Officer by the claimants, prior to the passing of the award and stated that evidence relating to these instances had also been placed by the expert valuer who has submitted his valuation report on the basis thereof.

5. The two instances which were relied upon by the claimants in this reference were as under:

a) The sale of a property known as Esjay property situated about 400 mtrs. away from the acquired property which was assigned by M/s.Hindustan Spinning and Weaving Mills to Esjay Property Ltd. under an agreement of sale dated 27.6.1985 followed by an indenture dated 21.3.1986. The assignor in this case Hindustan Spinning & Weaving Mills Ltd. were lessees holding a 90 years lease from lessor Thackersay Moolji Charities on lease rent of Rs.160/- per year. The total area of this plot was 550.99 sq.mtrs. and the total sale consideration was Rs.53/- lacs. The built up area on this property consisted of a structure with ground plus first floor with balcony admeasuring 11026 sq.ft.

b) The sale of property situated in C.S.No.1641 of Byculla Division by an Indenture dated 11.7.1986 by Hindustani Convenant Church Trust Association to M/s. Dudhwalla Builders. In pursuance of an agreement dated 30.11.1983, this property admeasuring 817.74sq.mtrs. was sold for an amount of Rs.40,33,000/- and it consisted of a land with bungalow of ground plus one upper floor, one out house consisting of seven quarters and a garage.

6. At the first instance, I would like to make it clear that I am going to disregard the entire evidence relating to instance No.2 i.e. sale of C.S.No.1641. In my opinion, there was insufficient material placed before the valuer Mr. Namavati to value this property accurately. It appears that the valuation of this property has been done by Mr. Namavati on the footing that 3000sq.ft of built up area on the ground floor of this property was in possession of tenants and that it was contemplated that these tenants should be provided alternate accommodations. It is fairly conceded before me that this transaction being a transaction in respect of a property of a registered public trust, the actual indenture was preceded by the permission of the Charity Commissioner to effect the sale. It is noticed that neither in the permission of the Charity Commissioner

nor in the Indenture nor in any other document there is any reference of 3000sq.ft. being the area occupied by tenants or about any obligation on the part of the transferee to provide 3000sq ft. alternate accommodation to the tenants. On the contrary, there is reference in the Charity Commissioner's order regarding the occupants of the said bungalow not being bonafide tenants. In the said order, it is not mentioned as to what area were occupied by such persons. There is also no reference in application of the transferee or in the Charity Commissioner's orders to give alternate accommodation to such tenants. It appears that Mr. Namavati (C.W.No.2) proceeded on a common sense footing that the said transaction could not have taken place unless the occupants were provided alternate accommodation as otherwise they would not have shifted from the suit premises. I find that the valuation relating to Incident No.2 is thus based on incomplete information and thus the opinion of the valuer involves a degree of conjecture and therefore, valuation in respect of this property may not be reliable. On this footing, I discard the evidence relating to incident No.2.

7. As regards the incident No.1 (hereinafter referred to "first incident") relating to Esjay property, it was strongly contended on behalf of the claimants that this

was a comparable instance since the said property was situated at a distance of only 400 mtrs. On perusing the valuer's report and reading his evidence, I find that based upon three documents as mentioned in the report period of costs of construction is taken to be 1955. The age of the RCC building according to the valuer would be 40 to 80 years. The costs of construction relating to structures of this building on the basis of two instances was valued at Rs.210/- per sq.ft. As regards these three parameters, I find that there is no cross examination. At the stage of arguments, it was submitted by Mr. Makhija that RCC buildings have normally a life of more than 80 years and if the valuer himself has given life of 40 to 80 years then life of the building could be taken as 80 years. He did not challenge the findings relating to the period of construction or the costs of the construction as there is no material elicited from the cross examination. I accept the limited argument of Mr. Makhija that since the age of the building is mentioned as 40 to 80 years, the age of the building may be taken as 80 years. Based upon his calculations the valuer calculated depricated costs of 14.22/- lacs and arrived at base value at Rs.7038.24 sq. mtrs. If however, the age of the building is taken as 80 years the depreciated costs, after keeping all other parameters intact would be t Rs.6887/- per sq.mtr.

8. As far as the acquired land is concerned, the valuer Mr. Namavati then gave a 20% increase for better situation and location, 5% increase as there was no road side slum in the acquired land and 5% increase for vista benefit. The value of the acquired land was therefore, calculated at a 30% premium. As regards this aspect of the matter, I find that there is no evidence to support of the 20% increase granted for better situation and location of the acquired land. In this regard the evidence of the valuer was that he had added 20% because Esjay property was situated in a poor muslim locality. Obviously the valuer is not a expert on the financial condition or religion of neighbours in the locality. No independent evidence has been led in this regard to show the financial conditions of residents of the locality. To answer to a question, the valuer has made it clear that in order to give 20% increase for the better situation and location, the factual position that Esjay property was in a poor muslim locality and was the only factor taken into consideration. In absence of proper and independent evidence in this regard, I must reject the addition in this regard on the ground of better situation and location because Esjay property is only 400 mtrs. away from the acquired land. I accept 5% increase given as there is no road side slum. As regards 5% given for vista benefit, I am not willing to

grant this because whatever benefit may accrue due to vista benefit would be taken away by the increased noise and air pollution due to such property being as a junction of two roads. Positive vista benefit factor should therefore, be negated by a increase in noise and air pollution which one expect to find from a busy and crowded locality at a junction of the road, which is the location in which the acquired property is admittedly situated. In the net analysis only 5% increase can be given to the acquired property over Esjay property.

9. As regards the increase in the rates of property in area at the rate of 15 % p.a. and the addition of 76.25% in the valuation of the acquired property over the Esjay property in view of increased rates due to time differential, there is no cross examination and hence, I am inclined to accept the opinion of the valuer.

10. In the net result, on reading the report of the valuer, I am inclined to accept the same as true and correct valuation subject to three changes which are as follows:

a) Change in the total life of the building from 70 to 80 years as per his own report and b) No increase of better situation or location c) No increase for vista

benefit.

11. Based upon these changes, parties have recalculated the compensation payable and as per the said joint calculations, total amount of compensation payable is as per the calculation sheet which is jointly signed by the Advocates by all parties and is taken on record and marked "X" for identification. Accordingly, a fresh award will have to be prepared in accordance with calculations in the sheet marked "X" for identification. The total amount payable to the claimants as per the said calculation is Rs.50,30,393/- till 31.8.2006. Further interest amount at the rate of 15% p.a. on the amount of Rs.16,74,008.00 will be payable till the date of payment or actual deposit in the court. Mr. Makhija appearing for the Corporation prays for 16- weeks time to make the said payment. It is accordingly directed that the acquiring body will deposit or pay the said amount within 16 weeks from today. If the amount is so deposited, the claimants will be at liberty to withdraw the same. Accordingly, the reference is disposed off.

(R. S. MOHITE,J.)